

4th day of October, 2001

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)  
c/o James A. Jaeger  
Hill, Glowacki, Jaeger & Hughes, L.L.P.  
P.O. Box 3006  
Madison, WI 53704

REHEARING  
DECISION  
ON REMAND

MRA-14/48121

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 22, 2001, under Wis. Stat. § 49.455(8)(d) (1999-00) and Wis. Admin. Code § HFS 103.075(8)(d) (November 2000), concerning petitioner's Community Spouse Resource Allowance (CSRA) under the spousal impoverishment rules of the Medical Assistance (MA) program, a hearing was scheduled for March 19, 2001. At petitioner's request the March 19, 2001 hearing was rescheduled.

Another hearing was scheduled for April 23, 2001. Petitioner failed to appear for the April 23<sup>rd</sup> hearing and a Decision dated April 27, 2001 was issued dismissing petitioner's petition as abandoned. By a letter May 1, 2001 and received by the Division of Hearings and Appeals (DHA) via fax on May 1, 2001 petitioner's attorney requested a rehearing stating that he had no record of receiving notice of the April 23<sup>rd</sup> hearing. By a letter Order dated May 4, 2001 DHA granted petitioner's request for a rehearing. A rehearing was held on June 19, 2001 in Juneau, Wisconsin. At petitioner's request the record was held open until July 6, 2001.

A Proposed Decision was issued dated August 20, 2001 and entitled "Proposed Rehearing Decision". That Proposed Decision concluded that petitioner's request to increase the CSRA by the fair hearing process was not ripe for decision and must be denied. The basis for that conclusion was that petitioner had failed to show that the following three whole life insurance policies, with a combined value in excess of \$2,000.00, generated income: (A) Certificate 6675935 issued August 25, 1986 from the Aid Association for Lutherans (AAL) insuring petitioner; (B) Contract 583768 issued April 1, 1950 from AAL insuring DEL; and, (C) Contract 3561089 issued February 1, 1991 from AAL insuring DEL. Exhibits #2, #3, #5B, #5C, #5D & #7. The Proposed Decision was sent to the Secretary of the Wisconsin Department of Health and Family Services (DHFS) for Final Decision-making.

The DHFS Secretary issued a Decision dated September 28, 2001 and entitled "Decision". That Decision reversed the August 20<sup>th</sup> Proposed Decision on the limited ground that the income-producing nature of the assets at issue was demonstrated by the facts of the record in this case. The Decision concluded that petitioner's request to increase the CSRA by the fair hearing process is ripe. The Decision ordered that the petition for review be remanded to the Administrative Law Judge (ALJ) for a decision on petitioner's request to increase the CSRA, treating the assets at issue as income producing assets.

The issue for determination is whether, under the spousal impoverishment rules of the MA program, petitioner's CSRA may be increased.

**PARTIES IN INTEREST:**

**Petitioners:**

(petitioner) [petitioner was not present at the June 19, 2001 hearing]  
c/o James A. Jaeger  
Hill, Glowacki, Jaeger, & Hughes, LLP  
Attorneys at Law  
2158 Atwood Avenue  
P.O. Box 3006  
Madison, Wisconsin 53704

**Represented by:**

James A. Jaeger  
Hill, Glowacki, Jaeger, & Hughes, LLP  
Attorneys at Law  
2158 Atwood Avenue  
P.O. Box 3006  
Madison, Wisconsin 53704

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street  
Room 250  
P.O. Box 309  
Madison, Wisconsin 53707-0309

BY: Sheila Drays, ESS Supervisor  
Dodge County Human Services & Health Department  
143 East Center Street  
Juneau, Wisconsin 53039-1371

**OTHER PERSONS PRESENT:**

(wife), petitioner's wife  
(son), petitioner's son  
Sharon Kok, ES Specialist in training

**HEARING OFFICER:**

Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx; CARES # xxxxxxxxxxx; DOB xx/xx/xxxx) is a resident of Dodge County and currently resides in a nursing home; petitioner is married to (wife) (SSN xxx-xx-xxxx); (wife) lives in the community. Exhibit #1.
2. Petitioner applied for MA, under spousal impoverishment rules, with the Dodge County Human Services & Health Department (County) on January 19, 2001 and was denied on January 22, 2001 due to excess assets. Exhibits #1 & #6.
3. The January 22, 2001 denial was based on total combined assets of petitioner and his wife in the amount of \$67,164.18. Exhibits #1, #5A & #6.

4. Petitioner and his wife do not have assets in excess of \$2,000.00 that do not generate income. Exhibits #2, #4 & #7.
5. The total monthly income of petitioner's wife, including income generated by the total combined assets of petitioner and his wife, is less than \$1,875.00 per month. Exhibits #1, #2, #4 & #7.
6. The Minimum Monthly Maintenance Needs Allowance (MMMNA) for petitioner's wife is at least \$1,875.00. Exhibits #1 & #7.

### **DISCUSSION**

Under the normal MA eligibility rules, a person is not eligible for MA unless they are first in poverty. If these rules applied to situations, such as petitioner's, where one spouse is in a nursing home and the other in the community, the community spouse would be forced into poverty before the spouse in the nursing home would be eligible for MA. This is because married couples have a legal claim to the income and assets of one another.

To avoid forcing community spouses into poverty, persons, such as petitioner, who are residents of a nursing home and still have a spouse living in the community may apply for MA under special rules known as "Spousal Impoverishment" rules. These rules are designed to allow the community spouse to keep a certain portion of the married couples assets and income. See, Wis. Stat. § 49.455 (1999-00); Wis. Admin. Code HFS § 103.075 (November 2000); MA Handbook, Appendix 23.0.0.

The amount of assets a community spouse is allowed to keep is called the Community Spouse Resource Allowance (CSRA) [also sometimes called the Community Spouse Asset Share (CSAS)]. The CSRA can be invested by the community spouse to generate income, which the community spouse can then use for living expenses. If the amount of income generated by the CSRA, combined with any other income the community spouse receives, does not rise to the level of a certain minimum monthly amount, an increase in the CSRA may be requested by way of the fair hearing process. The purpose of increasing the CSRA is to give the community spouse a greater amount of assets to invest, thereby generating a greater amount of income, which can then be used by the community spouse for living expenses. In this case, petitioner has requested that the CSRA be increased by the fair hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (1999-00); Wis. Admin. Code §§ HFS 103.075(8)(a)5. & (8)(d) (November 2000); MA Handbook, Appendix 23.4.3.2.

The CSRA can be increased if it is established at a fair hearing that the CSRA determined without a fair hearing does not generate enough income to raise the community spouse's income to the Minimum Monthly Maintenance Needs Allowance (MMMNA). In such a case a CSRA will be established by the fair hearing process that generates enough income to raise the community spouse's income to the MMMNA. Wis. Stat. § 49.455(8)(d) (1999-00); Wis. Admin. Code § HFS 103.075(8)(d) (November 2000).

In this case, the MMMNA is at least \$1,875.00. The total monthly income of petitioner's wife, including income generated by the total combined assets of petitioner and his wife, is less than \$1,875.00 per month. Thus, even if all assets are assigned to petitioner's wife, petitioner's wife's monthly income still will fall below the MMMNA. It is evident, therefore, that a CSRA determined without a fair hearing, or even with a fair hearing, could not generate enough income to raise petitioner's wife's income to the MMMNA. It is also evident that the CSRA must be increased so as to include, up to a maximum of \$67,164.18, all of the assets of petitioner and of petitioner's wife. This will bring petitioner's wife as close as possible to the MMMNA, given the total assets that are available to petitioner and his wife.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, petitioners' CSRA may be increased to include all assets of petitioner and his wife, but only up to a maximum of \$67,164.18.

**NOW, THEREFORE, it is**

### **ORDERED**

That this matter be remanded to the County and that, within 10 days of the date of this Decision, the County redetermine petitioner's eligibility increasing petitioner's CSRA to include all assets of petitioner and his wife, but only up to a maximum of \$67,164.18.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2001.

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Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals  
09282001/SPM

xc:  
Dodge County Human Services & Health Department  
Susan Wood, DHFS